



RSC Policy Brief: **“Net Neutrality” = Internet Regulation** *April 2007*

Democrat Proposal: Senator Byron Dorgan (D-ND) has introduced the Internet Freedom Preservation Act (S. 215) with 8 Democrat co-sponsors (including Sens. Clinton, Kerry, and Obama) and one Republican co-sponsor (Sen. Snowe). This bill would amend the Communications Act of 1934 (47 U.S.C. 151 et seq.) to establish numerous network neutrality (“net neutrality”) mandates for broadband (Internet) service providers. Specifically, all broadband providers would have to:

- “not block, interfere with, discriminate against, impair, or degrade the ability of any person to use a broadband service to access, use, send, post, receive, or offer any lawful content, application, or service made available via the Internet;
- “not prevent or obstruct a user from attaching or using any device to the network of such broadband service provider, only if such device does not physically damage or substantially degrade [not defined] the use of such network by other subscribers;
- “provide and make available to each user information about such user’s access to the Internet, and the speed, nature, and limitations of such user’s broadband service;
- “enable any content, application, or service made available via the Internet to be offered, provided, or posted on a basis that--
 - is reasonable and nondiscriminatory, including with respect to quality of service, access, speed, and bandwidth;
 - is at least equivalent to the access, speed, quality of service, and bandwidth that such broadband service provider offers to affiliated content, applications, or services made available via the public Internet into the network of such broadband service provider; and
 - does not impose a charge on the basis of the type of content, applications, or services made available via the Internet into the network of such broadband service provider;
- “only prioritize content, applications, or services accessed by a user that is made available via the Internet within the network of such broadband service provider based on the type of content, applications, or services and the level of service purchased by the user, without charge for such prioritization; and
- “not install or utilize network features, functions, or capabilities that impede or hinder compliance with this section.”

The Democrat bill would also prohibit broadband service providers from requiring subscribers, as a condition on the purchase of any broadband service offered by such broadband service provider, to purchase any cable service, telecommunications service, or Internet Protocol (IP)-enabled voice service (“VoIP”).

While a House companion bill to S. 215 has not yet been introduced, it is likely that Rep. Edward Markey (D-MA) will soon do so. Reports indicate that this bill will move through the Energy and Commerce Committee and to the House floor sometime over the next few months.

Legislative History: In the 109th Congress, Rep. Markey offered a net neutrality amendment (H.Amdt. 987) to H.R. 5252 (Communications Opportunity, Promotion, and Enhancement Act). This amendment, which was substantively similar to S. 215 described above, failed by a vote of 152-269: <http://clerk.house.gov/evs/2006/roll239.xml>. To see the **58 Democrats who voted against the Markey net neutrality amendment**, go here: <http://clerkhouse.house.gov/votes/votes3.asp?year=2006&roll=239&party=D&vote=N>. To see the 11 Republicans who voted for the Markey amendment, go here: <http://clerkhouse.house.gov/votes/votes3.asp?year=2006&roll=239&party=R&vote=Y>.

Rep. Markey also introduced a stand-alone net neutrality bill, H.R. 5273 with 23 co-sponsors (all Democrats, including Rep. Nancy Pelosi, Rep. Barney Frank, Rep. Barbara Lee, Rep. George Miller, Rep. Jim McDermott, Rep. Henry Waxman, and Rep. Lynn Woolsey), which did not come to the House floor last Congress.

Title II of H.R. 5252, as it passed the House, included compromise net neutrality language, giving the Federal Communications Commission (FCC) authority to enforce its Broadband Policy Statement issued in September 2005, which is as follows:

- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to access the lawful Internet content of their choice.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to competition among network providers, application and service providers, and content providers.

H.R. 5252 would have allowed the FCC to enforce the Statement—NOT by promulgating regulations (which was explicitly prohibited in the bill)—but only by adjudicating complaints on a case-by-case basis (each adjudicatory proceeding would have had to have been completed within 90 days and could have resulted in the FCC ordering an entity to comply with the Statement, subject to a maximum \$500,000 fine per violation). The FCC would only have been authorized to promulgate regulations on the procedures for the adjudicatory proceedings.

H.R. 5252 passed the House by a vote of [321-101](#) and was never brought to the Senate floor.

Also in the 109th Congress, Senator Olympia Snowe (R-ME) introduced S. 2917 with 13 Democrat co-sponsors. S. 2917 was identical to S. 215 in the 110th Congress (described above) and was not brought to the Senate floor.

Additional Background: Net neutrality is generally promoted as a way of preventing Internet service providers from charging content companies extra fees (which may be passed on to Internet users) for guaranteeing priority to certain kinds of broadband services. That is, because Internet traffic is soaring—and at ever-increasing bandwidths (think of the increase in YouTube videos posted, viewed, and shared in recent months)—some broadband providers have suggested that they may need to charge certain Internet content companies (like Yahoo and Google) tiered price structures to manage such traffic on their networks.

AT&T reports that, since 2000, the number of Internet users has increased 300%, and the volume of traffic has increased 1900%. Some people estimate that network traffic could increase 300-to-500 percent a year over the next 10 years. Per-household bandwidth demand is expected to reach 1.1 terabits per month by 2010. Just twenty of these homes would generate more traffic in a month than all of the Internet traffic in 1995.

AT&T also points out that downloading a single half-hour TV show consumes more bandwidth than does receiving 200 emails a day for a year, while downloading a single high-definition movie consumes more bandwidth than does the downloading of 35,000 web pages. That is the equivalent of downloading 2,300 songs over Apple's iTunes. Internet video could soon generate ten times more traffic than the Internet's current yearly traffic.

Meantime, as AT&T notes, the amount of spam has roughly doubled in the last year. In December of 2006, just one provider of Internet security services blocked 25 billion spam messages aimed at 36,000 clients, an increase of 144% over the same month in 2005. MSNBC reported that twice as much e-mail spam exists now as opposed to January 2006, half of which is "image spam," which can be up to ten times the size of traditional text spam.

Without significant and continuous investments in broadband networks, possibly supported by tiered pricing for certain video services, broadband providers assert that the Internet will have difficulty handling the increasing demands.

Tiered pricing for certain broadband services would not be all that different from a restaurant requiring patrons to order a certain minimum amount of food when seated in its private room in the back. If you want special treatment, you pay more. Otherwise, you can sit in the main dining room and order what you want off the regular menu. It's not that you'll get bad service in the main dining room; you just won't get special service. Broadband service providers are suggesting that they may need to take much the same approach with Internet traffic.

The Democrat bill (S. 215) described at the beginning of this policy brief contains the net neutrality language that many large Internet content providers, Silicon Valley companies, and liberal activist groups like MoveOn.org have requested. Such language would require the

FCC to promulgate regulations to prohibit cable providers from offering tiered services and pricing on their networks. In other words, true net neutrality would prohibit private companies from offering the services they want and charge the prices that they want on their own property (their networks).

Although the Republican compromise approach to net neutrality last year (H.R. 5252) would have taken an adjudicatory (instead of regulatory) approach to equity on cable networks, allowing the FCC to hear complaints about alleged departures from a set of four broad Internet freedom principles (see explanation above), this approach still effectively limits what broadband service providers can offer (and at what price) on their own networks.

Outside Organizations: In the past, supporters of the strict regulatory approach to net neutrality have included MoveOn.org, eBay, Google, Yahoo, Intel, Amazon.com, and Microsoft.

Opponents of net neutrality have included FreedomWorks, Americans for Tax Reform, the Heritage Foundation, the American Conservative Union, National Taxpayers Union, Citizens against Government Waste, the U.S. Chamber of Commerce, the National Association of Manufacturers, Americans for Prosperity, Free Enterprise Fund, the Center for Individual Freedom, the National Cable and Telecommunications Association, USTelecom, Verizon, AT&T, Cisco Systems, Qualcomm, 3M, EarthLink, Motorola, and Corning.

Ironically, some supporters of net neutrality, while claiming that the Internet should be “neutral,” offer special tiered services themselves. For example, word-searches on Yahoo or Google yield special results on the top or sides of the webpage that have been paid for by advertisers.

Possible Conservative Concerns: Some conservatives may be concerned that net neutrality, despite its innocuous-sounding name, is really just more federal regulation of the Internet, which has thrived because of a relative lack of federal meddling. More specifically, some conservatives may be concerned that net neutrality would prohibit private companies from offering the services they want and charge the prices that they want on their own property (their networks) that they build and maintain with their own money.

Last year, the [Wall Street Journal](#) referred to net neutrality as “the web’s worst new idea.” The editorial notes that, “In the decade or so since the commercialization of the Internet began in earnest...excepting pornography and gambling, no bureaucrats have decided what services could be provided over the Internet, or who could offer them or how they could charge for them.” The editorial then urges, “Don’t regulate what isn’t broken.”

Craig Moffett of Bernstein Research, a Wall Street investment research firm, argued in 2006 that “mandated Net Neutrality would further sour Wall Street’s taste for broadband infrastructure investments, making it increasingly difficult to sustain the necessary capital investments. It would also likely mean that consumers alone would be required to foot the bill for whatever future network investments that do get made. That would result in much higher end-user prices, much steeper subsidies of heavy users by occasional ones, and, in all

likelihood, a much sharper digital divide. The United States as a whole would, in all likelihood, fall further behind other countries in broadband availability and reliability.”

An editorial in *The Washington Post* in 2006 echoed Moffett’s concerns: “The proponents of net neutrality also understate the costs of regulation. If cable and phone companies are not allowed to charge Internet firms for fast delivery, they will be deprived of one source of profits. This will make it harder to raise capital to build the next generation of superfast Internet pipes, capable of delivering high-quality video. Moreover, any definition of net neutrality is likely to be contested in the courts, and legal uncertainty will further deter investment. As a result, net neutrality could end up meaning that all Web services get delivered at a similar but relatively slow rate.”

James Gattuso of the Heritage Foundation wrote last year that net neutrality “would be a bonanza for lobbyists and lawyers, but hurt innovation, investment and Internet users.” Consumers would be left with fewer choices at higher prices.

Some conservatives may also be concerned at the provision, which has been paired with net neutrality language in the past, that would prohibit broadband service providers from bundling services together (like Internet service and telephone). This is an anti-capitalist restriction akin to prohibiting restaurants, for example, from bundling food items together, so that chicken parmigiana had to be sold and priced separately from the side of pasta. The free market should decide what is acceptable (and preferable) to bundle together at what price, and what is not.

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